

State Responses to the “Courts Bring Back Court Reporters After Electronic Recording Use” Document

State	Reported Findings	Research Findings
Texas	<p>2001- Brought back stenographic reporters after trying both audio and video taping methods, citing realtime court reporting and the ability to have an immediate transcript; saving money during expert witness testimony by having the experts review the transcript from the day before instead of sitting through previous days of court; time and equipment involved in reviewing video testimony - taking at least five hours to review five hours of testimony, compared to 30 minutes to review the same transcript; inherent problems and inaccuracies in transcription of recorded proceedings; unanticipated costs and additional personnel to perform all the functions that a stenographic reporter provides.</p>	<p>Note: Texas is a locally funded, decentralized system</p> <p>Texas is presumptively a steno reporting state which has only permitted very limited exceptions apparently by supreme court order</p> <p>The statute is Government Code Section 52.021(c)(4):</p> <p>Sec. 52.021. CERTIFICATION OF REPORTERS. (a) A person may not be appointed an official court reporter or a deputy court reporter unless the person is certified as a shorthand reporter by the supreme court. (b) A person may not engage in shorthand reporting in this state unless the person is certified as a shorthand reporter by the supreme court. (c) A certification issued under this chapter must be for one or more of the following methods of shorthand reporting: (1) written shorthand; (2) machine shorthand; (3) oral stenography; or (4) any other method of shorthand reporting authorized by the supreme court.</p> <p>The report intimates that Texas systemically switched to recording and then switched back; assumption is the commentary reflects one or a few individual judges experimenting with recording and switching or finding those drawbacks.</p> <p>The (supreme) Court has approved a handful of single courts wanting to use recording. Assumption is that one or a few courts that tried recording and switched back (possibly because a new judge reversed course).</p> <p>Information provide by: Carl Reynolds, Administrative Director</p> <p>Texas court reporters who have been in the profession for many years advise staff that the topic of electronic court reporting continues to come up frequently especially with the advancement of technology, however no trend in that direction has been established yet in Texas. Some years back I heard of one instance where a tape recorder was used for court proceedings, and when a new Judge came on board with new staff, they found the tapes thrown in a closet, some were not labeled, and some</p>

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		<p>were not audible so that court switched back to using a court reporter. It is my understanding that in Texas, courts such as probate courts may be more likely to use recording equipment and there are a few courts who were approved to use that method to take down civil proceedings.</p> <p>Information provided by: Michele L. Henricks Director Court Reporters Certification Board</p>
New Mexico	<p>Started using recording systems in 1982. By 1986 brought back stenographic reporters, citing unexpected costs, frustrations, backlog of cases at the appellate level, and great increases of time and additional personnel costs with the tape systems. The state abandoned the systems and returned to faster and more cost-effective court reporters.</p>	<p>New Mexico Rule 12-211 identifies the "transcript of proceedings" as "audio recordings of the proceedings and stenographic transcripts of the proceedings." This definition of the official record of proceedings has only had one change in the last 15 years; replacing in 2005 the words "tapes" and "tape recordings" with "audio" and "audio recordings."</p> <p>On October 30, 2001, the Supreme Court issued Order No. 01-8500, which both reiterated the Court's "policy of encouraging the use of certified court reporters in all district court trials to facilitate the preparation of written transcripts and expedite the processing of appeals" and implemented a program to "convert" audio recorded proceedings by hiring typists to produce a written appellate transcript from the audio recordings. In 2005, the AOC raised the rate paid per page for court reporter transcripts from \$1.00 to \$2.50 to attempt to address the continuing difficulties of attracting court reporters to court cases.</p> <p>In practice, the Court's hope for court reporters in every district court case never came close to being realized. We could never get court reporters on staff in most district courts outside of Albuquerque. We ended up sending court reporters all over the state to stenographically record first-degree, capital criminal cases (death penalty cases and those with possibility of a life sentence), and otherwise continued to see most appeals (about 90%) reviewed based on the audio recording. The "conversion" process from audio recordings to paper worked adequately until fiscal year 2008, allowing the production of a written transcript from the audio recording in most of the cases with a longer record. Funding peaked that year at about \$125,000, but then began to shrink. Now few of the cases the appellate courts would like to "convert" can be converted, and most appeals are heard from digital audio recordings.</p> <p>In sum, New Mexico continues to officially record most cases by digital audio recording, and this audio recording often serves as the official</p>

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		<p>transcript on appeal. Some funds are available to convert a select number of these cases to a written transcript through a contract typing service. A small number of cases, including all those that may result in a capital sentence, are recorded stenographically. A few courts have a court reporter on staff, but most do not. For reasons of practicality and budget constraints, the Supreme Court may in 2010 consider rescinding the policy favoring use of stenographic recording in every district court case. - Artie</p> <p>Information provided by: Arthur W. Pepin Director, Administrative Office of the Courts</p>
Florida	<p>Florida's supreme court is currently reviewing an appellate court decision to determine what the official record is - the recording or the transcript from the recording. Digital recording systems record everything, including whispered conversations between clients and attorneys or onlookers. Keeping the recording from the public preserves the attorney-client privilege. The appellate court ruled the recordings are not an official record but are used to create the official record. If this decision is upheld, the court will be required to provide written transcripts, resulting in no cost savings to the court.</p>	<p>The information provided about Florida is only partially accurate. It is true that the Florida Supreme Court has affirmed that the written transcript of a proceeding is the official record for purposes of appeal. However, the Supreme Court also considered the question of whether the release of digital/audio/video recordings of court proceedings should be restricted (see attached opinion). The Supreme Court stated that:</p> <p>“...digital recordings of court proceedings are now widely used throughout the state by those involved in the court system, as well as the media, and have proven useful, reliable, efficient, and cost effective. We agree that access to these recordings should not be denied or left to the unfettered discretion of the trial court or the chief judge.”</p> <div data-bbox="1199 937 1268 997" data-label="Image"> </div> <p>sc08-1658 Opinion July 2009.pdf</p> <p>I've also attached another document that you might find helpful- trial court profiles for court reporting services. You can see from these profiles, just how widespread the use of digital reporting is in our state- all twenty judicial circuits use digital technology. I can state with confidence that the use of this technology is now firmly ingrained into the culture of our trial courts.</p> <div data-bbox="1199 1252 1268 1312" data-label="Image"> </div> <p>Court Reporting Circuit Profiles Statew</p> <p>Further, here's a link to a report from our Commission on Trial Court Performance and Accountability that contains recommended standards</p>

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		<p>and best practices for court reporting services. http://www.flcourts.org/gen_public/TCPACtReportingFinalReport.pdf</p> <p>The report provides quite a bit of discussion on the efficiency and effectiveness of digital technology. It was the position of the Commission that digital court reporting should be used for the majority of proceedings, however stenography should be used for proceedings with a high probability of a transcript being requested. These standard and best practice recommendations are still pending before the Supreme Court, but we expect a decision soon.</p> <p>As to cost savings, I would point out that there is a cost savings with the release of audio/video recordings because it is less time consuming (uses less court resources) than producing a transcript. It is also less expensive to the requestor (\$15-\$25 per CD or DVD vs. \$4-\$7 per transcript page). This increases access to the court system, a main goal of the Florida Judicial Branch. With less than 2% of cases appealed in Florida, the need for transcription for the purposes of appeal is very low in comparison to the millions of proceedings that are recorded. Further, I would point out that cost savings is also achieved during the recording of a proceeding. With stenography, you have to have one court reporter for each courtroom. With digital, you can have one court reporter monitor multiple courtrooms. So you save money not just with reducing transcripts, but also with reducing court monitoring costs.</p> <p>The Florida Supreme Court issued its order promulgating court reporting standards and best practices which can be found at http://www.floridasupremecourt.org/clerk/adminorders/2010/AOSC10-1.pdf</p> <p>Information provided by: Sharon Buckingham Senior Court Operations Consultant Office of the State Courts Administrator</p>
Federal Courts	Appellate and trial court judges taking part in a two-year study said videotapes of trials were too cumbersome and took too long to find specific portions. As a result, the Judicial Conference of the United States voted to end the experiment in 1986	N/A as the comment related to video court reporting which is not the subject of any ASD-2 option.
New York	2008 - Legislation carried by the chairman of the Senate Judiciary	1. The bill introduced in the New York Legislature in 2008 was not

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	<p>Committee would prohibit the use of recording devices -- rather than a stenographic record taken by a court reporter -- in Supreme Court, county court, district court and family court when delinquency cases are being heard and during jury trials in New York City Civil Court. The rationale behind the bill is based on complaints about the quality of the transcripts generated by electronic recordings, mostly in family and surrogate's courts, but also in some criminal courts</p>	<p>enacted.</p> <p>2. After the bill was introduced, the Office of Court Administration clarified its policy regarding electronic recording to provide that electronic recording will continue in those courts and court proceedings where it is currently in use, but it will not be expanded to additional courts and court proceedings where it is not currently used unless court reporters are unavailable and efforts to hire a reporter on a permanent, provisional or per diem basis have failed.</p> <p>3. The practical effect of this policy is that in New York City electronic recording will continue in the Family Court and the Surrogate's Court, but it is unlikely that it will be expanded for the time being to other courts and court proceedings. In upstate New York, where electronic recording has been used in a wider range of courts and court proceedings and where court reporter shortages have been more acute in some places, limited expansion to additional courts and types of court proceedings may continue.</p> <p>Information provided by: Judge Larry Marks Office of Court Administration</p>
Kentucky	<p>1988 - Use of videotape recorders has resulted in malfunctions, retrials at cost to the state, and too much time spent by attorneys reviewing the tapes.</p>	<p>N/A as the comment related to video court reporting which is not the subject of any ASD-2 option.</p>
Illinois	<p>1990 - Installed videotape systems tried as an experiment sit idle. Chief Justice Richard C. Ripple said use of video is very limited. Other judges refuse to use it, stating they don't want to watch television.</p>	<p>N/A as the comment related to video court reporting which is not the subject of any ASD-2 option.</p>
Oregon	<p>2004 - Officials are calling for the return of court reporters instead of digital recording due to a series of missing or inaudible recordings. These instances include one hour of missing key witness testimony in a 2003 murder case; a retrial of a 2002 complex civil environmental case because the DR failed to record proceedings onto a CD; attorneys handling criminal appeals saying their clients' rights are compromised by inaudible portions of recordings; and attorneys hiring their own court reporters for fear of an inaccurate record.</p>	<p>We currently have 173 judicial positions in our state trial courts (across 36 counties). Every Oregon state trial court relies primarily on digital recording, but we do have a total of seven stenographic court reporters (in three counties). One of the reporters is assigned to a hearing-impaired judge in our largest county; she is the only court reporter in a trial court that has 38 judicial positions.</p> <p>We have submitted funding requests to the legislature for a project to experiment with bringing in stenographic court reporters, on a contract basis, to report in aggravated murder cases so that parties can have</p>

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		<p>access to same-day rough drafts of the day’s proceedings. We have not received the requested funding.</p> <p>Oregon law allows parties to bring a stenographic court reporter into the courtroom for their own purposes, and also allows for the stenographic court reporter’s record to be the official record of the proceedings if all parties agree. We do not have data on how often parties bring in a court reporter, but anecdotally we know it is not common practice.</p> <p>Our transition to digital recording has been largely an unplanned evolution, responding to current needs and budget situations. The transition really began a long time ago, with analog tape recording being used in some of our rural counties that had difficulty recruiting qualified stenographic reporters. We moved to analog recording throughout the state for our more routine types of cases that are less likely to be appealed, such as traffic violations and landlord/tenant disputes. Eventually, some courts began to experiment with digital recording as both an improvement over analog recording and to see if it was a viable alternative to stenographic reporting. In more recent times, the transition has been driven by severe budget reductions.</p> <p>As with transitioning to any new process or new technology, there have been new challenges. There have been issues with poor quality recordings and, in rare instances, with portions of the record missing entirely. The problems are not insurmountable but have pointed out the value of good planning and adequate training and monitoring. Unfortunately, budget constraints have forced changes that were not always well planned or executed.</p> <p>Monica Melhorn Oregon Judicial Department Office of the State Court Administrator</p>
Hawaii	The disastrous loss of nearly 100 grand jury indictments caused by a tape recorder system malfunction has resulted in the state’s trial courts relying exclusively on court reporters, leaving tapes for minor proceedings such as motions.	<p>The narrative about Hawaii is not correct. We do not rely exclusively on court reporters. We only have 30 court reporters employed by the Judiciary. In our 5th circuit (Kauai) no court reporters have been employed since around 1992 because they are not available.</p> <p>The report about the 100 grand jury indictments being lost is a fabrication. Apparently, a disgruntled former court reporter wanted to discredit the use of electronic recording and provided this inaccurate</p>

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		<p>information.</p> <p>Hawaii's court reporter situation is in transition. Through attrition and the unavailability of court reporters, I predict that we will eventually rely almost exclusively on digital recordings. When needed, transcription service contracts will be pursued.</p> <p>Information provided by: Thomas R. Keller Administrative Director</p>
Nevada	Nevada Federal Courts and Commissions brought back stenographic reporters in 1995 after using tape systems for three years, citing higher costs and inferior service compared to real time stenographic reporters.	<p>There was no report concerning the use of stenographic reporters in 1995. There was an effort to get judges to use recording operators that was somewhat successful, but as new judges joined the federal bench they preferred reporters and not recordings. The use of recordings or reporters is up to the judge. There is no court policy concerning the use of either. Most of the Federal judges do use court reporters, it is estimated for Nevada it about 70% court reporters and 30% recordings</p> <p>Information provided by: Ronald R. Titus State Court Administrator</p>